

Exhibit B

1 UNITED STATES COURT OF APPEALS
2 FOR THE
3 SECOND CIRCUIT

4 MICHAL HONICKMAN, Individually,
5 and for the Estate of
6 Howard Goldstein, et al.,
7 Plaintiffs/Appellants,

8 V.

9 BLOM Bank, SAL,
10 Defendant/Appellee.

11 * * *

12 TRANSCRIPT OF RECORDED ORAL ARGUMENT
13 HEARD ON THURSDAY, DECEMBER 10, 2020

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1 The following recorded Oral Argument was held on
2 Thursday, December 10, 2020, before The Honorable Rosemary
3 Pooler, The Honorable Richard Wesley, and The Honorable
4 Susan Carney, and was conducted pursuant to the Federal
5 Rules of Civil Procedure, and transcribed after the fact,
6 as follows:

7 * * *

8 JUDGE POOLER: Next on our calendar is
9 Honickman versus BLOM Bank.

10 MR. RADINE: Good morning, and may it
11 please the Court. This is Michael Radine of
12 Osen, LLC, on behalf of the plaintiffs/
13 appellants.

14 I'd like to begin this morning by focusing
15 on the district court's misstatement of the
16 general-awareness standard set forth in
17 Halberstam v. Welch, which applies to JASTA
18 claims. The district court held that
19 plaintiffs must allege BLOM's awareness of a
20 role in terrorist attacks. But the lower
21 court's decision, which relies substantially on
22 Kaplan v. LCB, which is currently before this
23 court as Licci v. LCB, is incorrect.

24 Under JASTA, a defendant must be generally
25 aware that it is playing a role in violent or

1 life-endangering activities -- it doesn't
2 necessarily have to be violent -- from which
3 acts of international terrorism are a
4 foreseeable risk. The standard comes from
5 Halberstam, where the defendant assisted,
6 quote, overall illegal or tortious activity,
7 which there was a criminal enterprise in stolen
8 goods, from which, quote, violence and killing
9 is a foreseeable risk. Under JASTA, then,
10 terrorist activities or life-endangering
11 activities, as the Court in Linde used those
12 phrases, means conduct relating to a terrorist
13 enterprise, not terrorist attacks. Here, the
14 lower court disagreed with Halberstam's
15 foreseeability framework, holding that it is,
16 quote, not enough for plaintiffs to plausibly
17 allege that BLOM was generally aware of its
18 role in terrorist activities, from which
19 terrorist attacks were a natural and
20 foreseeable consequence.

21 JUDGE WESLEY: Kind of an interesting --
22 an interesting idea that the district court
23 could disagree with Halberstam's analysis,
24 since Halberstam is specifically incorporated
25 into the -- into the JASTA framework, isn't it?

1 MR. RADINE: Yes. I agree, Your Honor.
2 And, indeed, on the next page of its decision,
3 on footnote 8, the Court mentions the passage
4 from Halberstam I quoted a moment before and
5 rejects it as incompatible with Linde. But
6 Linde, of course, explicitly adopts Halberstam
7 and does not require more from a pleading than
8 allegations of knowingly funding a terrorist
9 organization. Indeed, it held that whether,
10 quote, providing routine financial services to
11 associates of terrorist organizations is itself
12 a violent, life-endangering act for the
13 purposes of primary liability, much less
14 playing a role in them for secondary liability,
15 is a jury question. And that's Linde at 327.

16 So the result is, the lower court found it
17 dispositive that BLOM had no specific knowledge
18 that these nominal charities engaged in any
19 violent activities themselves, to quote the
20 lower court. But BLOM more than plausibly knew
21 that they were engaged in life-endangering
22 activities and that they were Hamas fundraising
23 institutions. You can't --

24 JUDGE POOLER: Did they know that? Did
25 they know that they were Hamas fundraising

1 institutions? Did you allege that in your
2 complaint, and did you have any evidence to
3 support that?

4 MR. RADINE: Yes, Your Honor. This is the
5 district court's second error. The -- the
6 allegations we presented -- which this court is
7 lenient as to the state of mind and takes
8 allegations in their totality rather than in
9 isolation -- shows that BLOM did know that.
10 Hamas operated openly in Lebanon and in the
11 Palestinian refugee camps. Hamas created the
12 three customers, as they're called. So, for
13 instance, Sanabil, which the FBI in 2001 said
14 was a, quote, known front or supporter for
15 Hamas, created by Hamas as its da'wah -- is the
16 term -- headquarters in Lebanon, led by Hamas
17 leadership. And that means Hamas leadership at
18 the time, despite BLOM's suggestion otherwise.
19 That's in our complaint at 591.

20 JUDGE POOLER: So is it -- is it your
21 argument that if BLOM didn't know, they were
22 willfully ignorant? They made themselves
23 willfully ignorant of these facts that you
24 allege here?

25 MR. RADINE: They would have had to have

1 been. It would have to be a -- a decision at
2 that point to not know what was clear, not only
3 from Sanabil's status as a Hamas institution,
4 but where the money was coming into Hamas.
5 Millions of dollars are coming into Hamas from
6 two organizations that were already designated
7 by Israel, and then, of course, from HLF,
8 designated by the United States in 2001, and
9 all this money was being converted into cash.
10 So millions of dollars are coming in from
11 Hamas' fundraising network abroad and being
12 pulled out in untraceable cash.

13 JUDGE CARNEY: Let me ask. I mean, do the
14 allegations support -- I mean, the notion that
15 being aware of red flags is tantamount to
16 having an intention to further terrorist
17 activity, doesn't Linde suggest that we need to
18 have something more? And Siegel says that less
19 than an intention to further that activity is
20 inadequate to support liability under 2333.

21 MR. RADINE: No, Your Honor. Linde nor
22 Siegel require intent, and Halberstam as well
23 does not require intent. Nothing in JASTA --

24 JUDGE WESLEY: And Halberstam only
25 requires general awareness and some degree of

1 foreseeability. General awareness that there's
2 a role -- that by -- by participating, that
3 somehow playing a role with regard to the
4 terrorist organization in some particular way,
5 and that it's foreseeable from that role that,
6 indeed, terrorist activity might arise. They
7 don't have to have a specific purpose and/or
8 awareness of that it -- that they're assisting
9 terrorist activity itself, do they, under
10 Halberstam?

11 MR. RADINE: No, they don't. There's no
12 intent required, and it was not at issue there.
13 As Your Honor said, the question is the
14 awareness of the role in terrorist activities
15 from which violence is foreseeable. As the
16 supreme court found in Holder v. Humanitarian
17 Law Project, support for terrorist
18 organizations results in violence. The phrase
19 was, facilitates more terrorist attacks.

20 And that would be clear here, to BLOM
21 moving millions of dollars into the area, which
22 is then pulled out in cash. Cash, which they
23 admit at Page 32 of their brief, they don't
24 have visibility on the use for that cash; they
25 just see it leaving the account in the

1 untraceable cash.

2 We know from the treasury designation,
3 though, that Sanabil was using that cash to,
4 quote, provide funding to Hamas, in addition to
5 its recruiting efforts in the camps and
6 elsewhere.

7 JUDGE WESLEY: In Licci you have fairly
8 specific allegations with regard to some of the
9 customers and their specific activities as the
10 treasury of Hezbollah. So the customers
11 themselves were identified. And the -- and the
12 transactions, including the ever-increasing
13 daily cash-transaction limits, had some
14 coordination, at least as far as your -- as
15 your complaint was in that -- same law firm
16 here -- was concerned in identifying the fact
17 that it had an appreciation that it was going
18 beyond just being the banker for these folks.
19 Isn't that the case? I mean, you -- you had
20 far more specific allegations in Licci than you
21 have here, don't you?

22 MR. RADINE: Yeah. There are more
23 specific allegations in Licci; there are
24 allegations that are here that are not in
25 Licci. For instance, here, there is the Hamas

1 fundraising network that was already designated
2 abroad, where the money's coming in from. That
3 particular fact is not in Licci. But here, as
4 in there, Sanabil is designated as a
5 fundraising organization for Hamas, as in -- as
6 is Union of Good. They're playing the same
7 roles here. And that certainly would have been
8 enough for the bank to be generally aware of
9 the role that it's in.

10 They're all -- the defense is essentially
11 the same, which is that these entities call
12 themselves charities or commercial operations,
13 but, of course, that can't be immunizing under
14 the statute. Providing that support to an FTO
15 is enough, as a pleading matter, certainly, to
16 meet JASTA.

17 And I see I'm over my time here.

18 JUDGE POOLER: Okay. Counselors --
19 counselors, are you both aware of a case
20 entitled Reuvane versus Lebanese Canadian Bank?

21 MR. RADINE: Yes, Your Honor.

22 JUDGE POOLER: You're aware of that,
23 that --

24 MR. RADINE: Yes.

25 JUDGE POOLER: -- that was argued last

1 November?

2 MR. RADINE: Yes. Also -- also called
3 Licci, that Judge Wesley referred to a moment
4 ago.

5 JUDGE POOLER: Thank you.

6 I'm sorry, Judge Carney. Did you have a
7 question?

8 JUDGE CARNEY: No. No.

9 JUDGE POOLER: Okay.

10 Thank you. You've reserved two minutes
11 for rebuttal.

12 MR. RADINE: Thank you.

13 JUDGE POOLER: We'll turn to the counsel
14 for the bank.

15 MS. GOLDSTEIN: May it please the Court.
16 Linda Goldstein for BLOM Bank.

17 The district court's decision is faithful
18 to this court's precedence in both Linde and
19 Siegel, and the arguments you have heard this
20 morning are largely an invitation to rewrite
21 those two opinions.

22 I will address the three main defects in
23 plaintiffs' argument: First, the incorrect
24 legal standard for the general-awareness prong
25 of a JASTA claim; second, the insufficient

1 factual allegations supporting the
2 substantial-assistance prong in this case; and,
3 third, the contention that the allegations in
4 the complaint are enough to allow the case to
5 go to discovery.

6 First, both Linde and Siegel confirmed
7 that the general-awareness prong of a JASTA
8 claim requires that defendant be aware that by
9 assisting the principal it is itself assuming a
10 role in terrorist activities, specifically,
11 activities that are violent or life
12 threatening. Neither case held that it is
13 enough to allege that a defendant was generally
14 aware that it was assuming a role in financing
15 a foreign terrorist organization from which it
16 was foreseeable that terrorist activities would
17 later result.

18 JUDGE WESLEY: Well, let me ask you a
19 question. If there's a -- if a panel of this
20 court were to find that there's an
21 inconsistency between Halberstam and Linde,
22 which controls?

23 MS. GOLDSTEIN: There is no inconsistency
24 between --

25 JUDGE WESLEY: No. Don't answer -- I

1 asked you a question. If the panel of -- if
2 this panel were to find that there was an
3 inconsistency between the two, which controls?

4 MS. GOLDSTEIN: Well, plainly, Your
5 Honor --

6 JUDGE WESLEY: Halberstam controls, does
7 it not?

8 MS. GOLDSTEIN: -- JASTA says that --
9 that --

10 JUDGE WESLEY: Does not -- excuse me.

11 MS. GOLDSTEIN: -- Halberstam provides the
12 framework. And so the question is, what is the
13 framework that Halberstam provides. And my
14 position, Your Honor, is that Linde is fully
15 consistent with Halberstam. And if you let me
16 explain --

17 JUDGE WESLEY: Well, don't you -- doesn't
18 it trouble you the district court found that
19 Halberstam was wrong or that Linde was right?

20 MS. GOLDSTEIN: Um, I -- number one, Your
21 Honor, I don't believe that that is what the
22 district court held.

23 JUDGE WESLEY: Okay.

24 MS. GOLDSTEIN: But if I could point out,
25 the very first paragraph of Halberstam's legal

1 analysis at page 476 of the D.C. Circuit's
2 opinion explains that the case addresses two
3 separate questions: First, whether Halberstam
4 was subject to vicarious liability for her
5 partner's burglaries --

6 JUDGE WESLEY: Right.

7 MS. GOLDSTEIN: -- and, if so, whether the
8 scope of that liability included a murder
9 committed by her partner during the course of
10 one of those burglaries.

11 JUDGE WESLEY: Uh-huh.

12 MS. GOLDSTEIN: The opinion's reference to
13 foreseeability arises only in connection with
14 the second question and not the first. In
15 other words, the foreseeability of the murder
16 played no role in the Court's analysis whether
17 Halber- -- Hamilton was subject to vicarious
18 liability for the burglary. That first
19 question was answered purely with reference to
20 Hamilton's knowledge of Welch's property crimes
21 at night and her role in processing the
22 proceeds of those crimes.

23 By analogy, under JASTA, a defendant must
24 be found vicariously liable for one act of
25 international terrorism before the

1 foreseeability of other consequences can come
2 into play. Judge Matsumoto clearly applied the
3 correct legal standard for general awareness when she
4 followed this court's decisions in both Linde and
5 Siegel. It's not just one case; it's both.

6 If I might also point to the statute, Your
7 Honor, the statute creates aiding-and-abetting
8 liability for acts of international terrorism.
9 By statutory definition, that requires violence
10 or life-threatening activity.

11 Halberstam, by contrast, was a survey of
12 common-law, aiding-and-abetting, and conspiracy
13 liability. And the Court was clear that the
14 analysis was meant to cover a broad range of
15 torts, not just torts resulting in physical
16 injury. But the -- but the analysis
17 specifically refers in numerous points to
18 aiding-and-abetting liability for
19 securities-fraud claims, which, obviously,
20 would not involve violence or life-threatening
21 activity.

22 So what the Courts did in Linde and again
23 in Siegel was take that middle prong of
24 Halberstam, which refers to illicit or tort --
25 sorry -- illegal or tortious activity and

1 replaced it with the words of JASTA, which is
2 terrorist activity. And the sine qua non of
3 terrorist activity is violent or life-
4 threatening acts. And that is why Linde and
5 Siegel both correctly applied the Halberstam
6 framework, which is what the statute requires,
7 to the particulars of a claim under JASTA for
8 vicarious liability under the Anti-Terrorism
9 Act.

10 If I might move on to substantial
11 assistance. Substantial assistance in this
12 part -- case are particularly flimsy. The only
13 allegations against BLOM are that it processed
14 deposits into the accounts of Sanabil and Subul
15 Al-Khair, and that it facilitated distribution
16 of small cash payments to Palestinian refugee
17 camps living in Lebanon, not in the West Bank
18 or Israel, which is where all of the attacks
19 are alleged to have occurred. That is what the
20 complaint says.

21 There can be no speculation that the cash
22 somehow went somewhere else. The complaint
23 says that the cash went to those refugees in
24 the camps in Lebanon, and there is no
25 allegation that either Sanabil or Subul

1 Al-Khair were themselves involved in violent or
2 life-threatening activities --

3 JUDGE WESLEY: Excuse me.

4 MS. GOLDSTEIN: -- there is no allegation
5 that any of the people that got that money
6 engaged in violent or life-threatening
7 activity, and there is no allegation that any
8 of the funds transmitted to Sanabil or Subul
9 Al-Khair made their way to Hamas.

10 JUDGE WESLEY: Excuse me. Excuse me. Is
11 there -- was Sanabil designated prior to --

12 MS. GOLDSTEIN: No. No.

13 JUDGE WESLEY: -- as a customer by Israel?

14 MS. GOLDSTEIN: No. Sanabil -- Sanabil
15 was designated by Israel -- that was not
16 public. The complaint does not allege that
17 that was publicly available. And, in fact, I
18 tried very hard to find it. My library staff
19 couldn't find it anywhere other than on -- on
20 plaintiffs' counsel's website. Israel enacted
21 a law in 2005, four years after the last of the
22 attacks in this case, which for the first time
23 allowed those designations to be posted on a
24 website that banks could consult. But before
25 2005, they were not generally available, so

1 there's no basis to surmise --

2 JUDGE WESLEY: So you take --

3 MS. GOLDSTEIN: -- that BLOM had any idea
4 that they were there.

5 JUDGE WESLEY: You take umbrage with --
6 with your opponent's indication earlier, that
7 he -- he said there was a designation of
8 Sanabil prior, as early as 2001?

9 MS. GOLDSTEIN: The U.S. Government did
10 not designate Sanabil until August 22nd --

11 JUDGE WESLEY: I didn't say that. I --

12 MS. GOLDSTEIN: -- 2003. That's just
13 incorrect, Your Honor.

14 JUDGE WESLEY: Okay. Very good. Thank
15 you.

16 JUDGE POOLER: -- to interrupt. Wasn't
17 there --

18 MS. GOLDSTEIN: The Israeli designation
19 was earlier, but that was not -- that was not
20 public.

21 JUDGE POOLER: Wasn't there evidence that
22 some of the money from BLOM Bank was used to
23 pay survivors of -- of suicide bombings?

24 MS. GOLDSTEIN: That's not the case, Your
25 Honor. There's no allegation of that. There's

1 no allegation that either Sanabil or Subul
2 Al-Khair, the only two customers alleged to
3 have received funds in the complaint, ever made
4 such payments. And so that is one of the
5 reasons, Your Honor, that discovery of BLOM's
6 knowledge is really irrelevant, because there
7 isn't even an allegation that that's what
8 Sanabil and Subul Al-Khair did.

9 So when BLOM received a payment -- a
10 transfer to a Sanabil account that is expressly
11 designated 'help for orphan children' and what
12 Sanabil does is give money to orphan children,
13 there's no reason for BLOM to be at all
14 suspicious of that.

15 JUDGE CARNEY: Wasn't there -- wasn't
16 there one incident where the Sanabil account
17 received extensive regular transfers from the
18 Holy Land Foundation until September 2001, and
19 the first terrorist attack occurred on
20 December 1, and the Holy Land Foundation was
21 then designated a -- an SDGT on December 3?
22 Now, putting those facts together, isn't it
23 reasonable to infer -- or that the bank was at
24 least put on notice that that's what was going
25 on in that account?

1 MS. GOLDSTEIN: Well, number one, Your
2 Honor, the standard is not inquiry notice; the
3 standard is actual knowledge. The statute
4 says --

5 JUDGE CARNEY: General awareness, not --

6 MS. GOLDSTEIN: Well, the statute requires
7 knowingly providing substantial assistance,
8 number one. Number two, Your Honor, the last
9 transfer from HLF, as you indicated, was in
10 September of 2001, and the designation took
11 place in December of 2001. And the complaint
12 does not allege nor am I aware that a bank has
13 any obligation to retrospectively
14 investigate -- not a customer, because HLF was
15 not a customer, Your Honor; HLF was a
16 transferor to a customer. And there's no
17 allegation that that is standard banking
18 procedure for a bank to go back to its books
19 and look at all of the incoming transfers that
20 were made to all of its customers to determine
21 if one of those customers -- one of those
22 transferors was later designated. So that's --
23 that's not a red flag.

24 The essential allegations in this case,
25 Your Honor, are substantially weaker than those

1 in Siegel, where this Court held that
2 substantial assistance was lacking where HSBC
3 was alleged to have provided millions of
4 dollars to its customer, Al-Rajhi Bank. But
5 the complaint offered at least conclusory
6 allegations that Al-Qaeda in Iraq had received
7 those funds.

8 Here, there isn't even that, because there
9 is no allegation in the complaint that either
10 Sanabil or Subul Al-Khair sent any funds on to
11 Hamas.

12 JUDGE WESLEY: Your --

13 MS. GOLDSTEIN: And the entire argument
14 depends not even on alter-ego allegations,
15 because the word 'alter ego' does not appear in
16 the complaint and the word 'alias' does not
17 appear in the complaint.

18 JUDGE POOLER: I'm sorry. I believe Judge
19 Wesley has a question.

20 JUDGE WESLEY: No. That's all right. I
21 don't -- I don't want to interfere with
22 counsel's argument.

23 Go ahead.

24 MS. GOLDSTEIN: I'm sorry, Your Honor.

25 JUDGE WESLEY: So am I.

1 MS. GOLDSTEIN: But my point is, the
2 complaint merely conflates the two. And if
3 this Court -- if the district court were to
4 make an alter-ego finding, it would have to
5 meet the legal standard based on facts alleged
6 in the complaint. And that was not done here.

7 The legal standard is quite clear. Your
8 Honor Judge Wesley recognized it in the -- in
9 the Kirschenbaum case: It has to be when one
10 entity so dominates and controls another that
11 they must be considered principal and agent,
12 and this is shown by proving significant and
13 repeated control over the alleged agent's
14 day-to-day operations. And that was -- that
15 was not shown here. That defect is critical,
16 because without that alter ego --

17 I'm sorry, Judge Pooler?

18 JUDGE POOLER: I said your time has
19 expired. Can you just wind up?

20 MS. GOLDSTEIN: Yes. Yeah.

21 Two points, if I may, Your Honor, just to
22 finish up on alter ego, that without that
23 alter-ego allegation, the only substantial
24 assistance that BLOM is alleged to have
25 provided here is facilitating the distribution

1 of funds by Sanabil and Subul Al-Khair to
2 refugees in camps in Lebanon, not in Israel or
3 the West Bank. And there's no allegation that
4 any of those funds were used to fund
5 terrorists.

6 If I can quickly address -- address --
7 address the discovery issue, Your Honor. They
8 say that they need to get discovery from BLOM
9 to cure their defective allegations; those
10 defects can't be cured by discovery from BLOM.
11 The alter-ego defects, information about the
12 relationship between Sanabil and -- or, Subul
13 Al-Khair and Hamas can't be cured by discovery
14 from BLOM. Whether it was well known in
15 Lebanon that Sanabil and Subul Al-Khair were
16 associated with BLOM can't be determinant -- I
17 mean, with Hamas; pardon me -- can't be
18 determined by discovery from BLOM.

19 JUDGE POOLER: Thank you. Thank you,
20 counsel.

21 MS. GOLDSTEIN: Thank you, Your Honor.

22 JUDGE POOLER: Mr. Radine, you have two
23 minutes for rebuttal.

24 MR. RADINE: Thank you, Your Honor. Just
25 a few quick points.

1 First, as to the money going to refugees,
2 that's what Sanabil claims. FTOs claim
3 charitable uses for their money; BLOM didn't
4 have visibility on that. And, of course, it
5 was the finding of Treasury that what Sanabil
6 did was provide funding to Hamas.

7 Second of all, the reference to HLF. The
8 argument that a bank shouldn't have to check
9 all of its customers' accounts doesn't hold up
10 when it's in terms of the customers who are
11 known Hamas institutions. When an organization
12 was openly created by Hamas, that is an account
13 that a bank would be expected to check and see
14 the millions of dollars coming in from HLF, an
15 organization that was designated for, in part,
16 paying families of suicide bombers.

17 Finally, as to -- as to the Halberstam
18 standard, of course, it does not require
19 knowledge in the violence. The line is: "For
20 Hamilton's aiding and abetting the murder, it
21 was enough that she knew she was involved in
22 some type of property -- personal-property
23 crime at night -- whether as a fence, burglar,
24 or armed robber made no difference -- because
25 violence and killing is a foreseeable risk in

1 any of those enterprises. The standard under
2 JASTA isn't different. The phrase 'terrorist
3 activities' is not in JASTA; that was a phrase
4 from Linde that is referring to the overall
5 tortious or illegal enterprise in Halberstam,
6 from which violence is a foreseeable result.

7 Finally, I'd add that the Siegel case here
8 is particularly inapposite, where the
9 plaintiffs failed to allege that any transfers
10 for an FTO passed through HSBC at all. HSBC
11 held no account for an FTO or an FTO front or
12 alter ego or what have you.

13 That's my time. Thank you, Your Honor.

14 JUDGE POOLER: Thank you both. Thank you
15 both for lively argument. We'll reserve
16 decision.

17 And I inform you that Reuvane versus
18 Lebanese Canadian Bank was argued in November,
19 and we may very well wind up holding this case
20 for the decision in that case.

21 Thank you.

22 MR. RADINE: Thank you, Your Honor.

23 (RECORDED PROCEEDINGS CONCLUDE)

24 * * *

25

1 STATE OF FLORIDA

2 COUNTY OF SARASOTA

3 I, JULIA M. BINGHAM, Court Reporter, Notary
4 Public in and for the State of Florida at Large, do
5 hereby certify that I was authorized to and did
6 stenographically transcribe the foregoing recorded
7 proceedings in the above-captioned case and that the
8 transcript is, to the best of my ability, an accurate
9 record of same.

10 I FURTHER CERTIFY that I am neither an attorney
11 nor counsel for the parties to this cause, nor a relative
12 or employee of any attorney or party connected with this
13 litigation, and that I have no financial interest in the
14 outcome of this action.

15 IN WITNESS WHEREOF, I have hereunto subscribed
16 my name and affixed my seal this date, December 13th,
17 2020, at Sarasota, Sarasota County, Florida.

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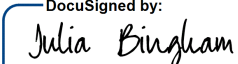
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Julia M. Bingham, Court Reporter
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